

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 4	CCRB Case #: 200302181	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 3:08 PM	Location of Incident: 3rd Avenue between East 53rd and East 54th Street, Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Fri, 02/28/2003 3:26 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 03/24/2003 4:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Alagna	00000	929973	CD OFF
2. POM Anthony Marks	18186	925671	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT James Klein	00000	877922	D C P I

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Marks	Force: Officer Anthony Marks used physical force against § 87(2)(b)	
B.SGT Joseph Alagna	Force: Sergeant Joseph Alagna used physical force against § 87(2)(b)	
C.POM Anthony Marks	Abuse: Officer Anthony Marks damaged § 87(2)(b) property.	
D.SGT Joseph Alagna	Abuse: Sergeant Joseph Alagna damaged § 87(2)(b) property.	

Synopsis

This complaint stems from the February 15, 2003 anti-war demonstration in Manhattan. It was filed by § 87(2)(b) of the § 87(2)(b) on behalf of § 87(2)(b) a § 87(2)(b) photographer. Articles about, and photographs of, this specific incident were published in the § 87(2)(b) on Sunday, § 87(2)(b), and the § 87(2)(b) edition of the § 87(2)(b) hence the case was placed on the agency's sensitive case list. Former Inv. Daniel Gotlieb conducted the investigation until November 4th, 2003, at which time Inv. Gotlieb left the CCRB and the case was reassigned to the undersigned.

At approximately 3:08 PM, § 87(2)(b) who was standing in the middle of 3rd Avenue just south of East 53rd Street and photographing a number of arrests occurring on the avenue, fell to the ground, allegedly causing one of her cameras and camera lens to break. Although § 87(2)(b) denied that any commands were issued to her or the other photographers with her, statements obtained from two other photographers as well as 49th Precinct PO Anthony Marks and Captain James Klein of the office of the Deputy Commissioner for Public Information indicated that commands were in fact issued for the photographers to get out of the avenue. § 87(2)(b), § 87(2)(g)

[REDACTED]

Summary of Complaint

§ 87(2)(b) *and* § 87(2)(b) *Articles*

On Sunday, § 87(2)(b), a photograph of and article about this incident were published in the § 87(2)(b) (enclosure 6). The photograph, taken by freelance photographer § 87(2)(b) (photograph #11 in this report), shows § 87(2)(b) falling to the ground with Sgt. Alagna and other photographers in the frame. The article provides a brief statement made by § 87(2)(b) about the incident, in which she claims “a cop charged at me and put his hand over my lens and pushed me to the ground.” The article also states that § 87(2)(b) was not injured, but that her camera was damaged.

The § 87(2)(b) also published a photograph of, and article about, this incident in its § 87(2)(b) edition (enclosure 6a). The photograph, a different photograph than that published in the § 87(2)(b) but also taken by § 87(2)(b) (photograph #10 in this report), shows § 87(2)(b) falling again with Sgt. Alagna and another photographer in the frame. § 87(2)(b) did not comment for this article, although the article quoted her from the § 87(2)(b)

Complainant's Letter

On February 19, 2003, § 87(2)(b) wrote a letter to Police Commissioner Ray Kelly, carbon-copied to Mayor Michael Bloomberg and Corporation Counsel Michael Cardozo (Enclosure 7-7b). The letter describes two separate incidents involving newspaper photographers § 87(2)(b) and § 87(2)(b). The incident with § 87(2)(b) is currently open (CCRB case #200301539). The case at hand deals solely with the incident involving § 87(2)(b).

The letter, based on hearsay, as § 87(2)(b) did not witness the incident, states that § 87(2)(b) was “charged and violently shoved to the ground by a uniformed police officer while she was photographing the police and protesters.” After highlighting some of § 87(2)(b) accomplishments as a photographer, § 87(2)(b) indicated that she was “totally unprepared for an assault,” and “holding the camera to her face and shooting pictures when the officer rushed up from the side and hit her, knocking her to the ground.” § 87(2)(b) alleges that “the assault physically injured § 87(2)(b) and that at least \$3,000 worth of damage was done to her camera equipment. Because § 87(2)(b) did not witness the incident, he was not formally interviewed.

Victim's Statement—§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on April 16, 2003 (Enclosure 10-10f). § 87(2)(b) had little independent recollection of the incident and her statement relied heavily on a series of photographs taken by § 87(2)(b) a freelance photographer for the § 87(2)(b) who was present with § 87(2)(b). § 87(2)(b)'s photographs were brought in by § 87(2)(b) and consisted of eighteen photographs taken between 3:06:19 PM and 3:08:25 PM on the date of incident (enclosure 18-18q). Information such as the date and time that each photo was taken was attached to each digital photograph in the form of an "exif" file. Some 8x10 glossy prints from this array were provided by the § 87(2)(b) and can be found in the envelope marked in the upper left corner § 87(2)(b) / Photo."

At approximately 3:00 PM, § 87(2)(b) was standing on the western side of 3rd Avenue near the intersection of East 53rd Street, wearing her press card prominently around her neck, with a group of photographers, including § 87(2)(b) § 87(2)(b) and § 87(2)(b). Numerous civilian demonstrators were also present on the sidewalks of the intersection, causing it to be "very difficult" to move. Vehicular traffic was flowing on the street and § 87(2)(b) specifically recalled MTA buses driving north on the avenue shortly before the incident occurred. At one point, a group of civilians was being arrested by approximately six uniformed police officers in the middle of the avenue, thereby stopping traffic from flowing north. § 87(2)(b) and the other photographers approached the scene in order to document the arrests; she estimated that she was standing approximately five feet from the western sidewalk and approximately seven to ten feet from the arrests. At no point was § 87(2)(b) told by any police officer that she could not be there or that she and the other photographers needed to move. The photographers, to § 87(2)(b) knowledge, were also never ordered to stop photographing the incident.

While she was photographing the arrests, § 87(2)(b) was charged at by a police officer, causing her to fall to the left and backwards to the ground. In photograph 8 of § 87(2)(b)'s series, § 87(2)(b) indicated that she was photographing an arrest just north of the woman wearing a black jacket with white stripes laying on the ground in a fetal position when the officer knocked her to the ground. § 87(2)(b) also presented the last photograph that she took with the camera she was using at the time of the incident, which confirms her statement about photograph 8 in § 87(2)(b)'s series. The woman wearing a black jacket with white stripes is at the bottom right corner of the photograph and an arrested woman immediately north of her is centered. There is also a large black glove covering the majority of the right side of the photograph and a police officer's torso occupying the left ¼ of the frame. An 8x10 gloss print of this photograph can be found in the folder marked in the upper left corner § 87(2)(b) / Photo," as well as Enclosure 18r.

In photograph 10 of § 87(2)(b)'s series of photographs, § 87(2)(b) can be seen falling to the right. Based on this photograph, § 87(2)(b) believed that the officer who struck her was the one wearing the helmet, subsequently identified as PO Marks. § 87(2)(b) admitted to "blowing up" the photograph prior to the interview and stated that when "you trace [his] arm all the way down [from his NYPD patch], you see an open hand" on her stomach. § 87(2)(b) also pointed out that the sergeant at the rear of the group with his hand curled around her lens is not extending his arms, but bending them. Thus, § 87(2)(b) surmised that he was not the one who pushed her. Once she was on the ground, several police officers then helped her back to her feet. As a result of her fall, § 87(2)(b) claimed that one of her cameras (which had been dangling around her neck during this incident) and its lens was damaged, specifically, that the filter on top of the camera lens was broken. The camera was no longer operational. § 87(2)(b) then left the area. The § 87(2)(b) took her camera but she was unaware of what they did with it. The newspaper provided her with new equipment on February 17th, 2003. Contrary to § 87(2)(b)'s letter, § 87(2)(b) denied that she sustained an injury.

Results of Investigation

Witness Statements—§ 87(2)(b)

§ 87(2)(b) and § 87(2)(b) a freelance photographer who was present with § 87(2)(b) during this incident and took several photographs (Enclosure 7c-7t), was interviewed on April 4, 2004 (Enclosure 11-11e). In his interview, § 87(2)(b) referred to the series of photographs he took of the incident and they are identified by number. § 87(2)(b) also a freelance photographer present during this incident, was interviewed on April 24, 2004. § 87(2)(b) § 87(2)(b)

§ 87(2)(b) and claimed to have been present at this incident, standing just south of the intersection where the incident occurred; she was interviewed on

March 26, 2003 (Enclosure 12-12d). § 87(2)(b) attended the demonstration with § 87(2)(b) and also claimed to have witnessed this incident; she was interviewed on April 17, 2003 (Enclosure 13-13c).

Contrary to § 87(2)(b) claim, § 87(2)(b) and § 87(2)(b) confirmed that officers had ordered the protesters to get out of the street. § 87(2)(b) also indicated that officers had threatened to use force if the photographers did not comply with the orders. § 87(2)(b) observed this incident through the lens of his camera, since he took still photographs of the incident as it unfolded. According to § 87(2)(b) was the photographer furthest into the street and he observed one or two officers hit her “almost in a football tackle style,” and “shove” her to the ground in the same motion, causing § 87(2)(b) to fall to the west. In photographs 10 and 12 of his series, § 87(2)(b) identified the “guy in the police hat as opposed to the helmeted officer” (subsequently identified as Sgt. Joseph Alagna) as the individual who hit § 87(2)(b) who is depicted in photographs 12 and 13 of § 87(2)(b)'s series wearing a brown leather jacket with a red sweater underneath and a dark hat, also observed § 87(2)(b) fall to the western edge of the street, though he claimed that the officers grabbed § 87(2)(b) from behind and pushed her to the ground. Later in his statement, though, § 87(2)(b) recanted, saying that he could not recall exactly from which direction the officers came. According to § 87(2)(b) fell “pretty strongly” on the lens of her camera. He observed this from about ten yards away.

§ 87(2)(b) observed § 87(2)(b) kneeling down in order to photograph a woman who was laying on the ground and being handcuffed when the photographer was “thrown” to the street, landing near the sidewalk. § 87(2)(b) did not describe who or what “threw” the photographer. § 87(2)(b) claimed that she learned the female photographer was a member of the press after reading about the incident in the § 87(2)(b). § 87(2)(b) claimed that a uniformed, White, young-middle-aged male officer with a medium build and non-gray hair grabbed § 87(2)(b) by the arm and moved § 87(2)(b) towards the sidewalk, causing § 87(2)(b) to stumble to the ground “practically next to [where she was standing]...separated by one person.” However, § 87(2)(b) then claimed that she did not observe the officer actually pushing § 87(2)(b).

§ 87(2)(b) recalled § 87(2)(b) cursing at the officers after this, telling them, “fuck you, I’m fucking press.” Sgt. Alagna started walking away and § 87(2)(b) appeared to be yelling at him. § 87(2)(b) approached § 87(2)(b) afterwards and noticed that her camera was damaged, specifically, that the camera body was “scuffed up.” He did not know if the camera lens was shattered.

Attempts to Contact Additional Photographer Witnesses

Attempts were made to contact § 87(2)(b) a § 87(2)(b) photographer, and § 87(2)(b) a § 87(2)(b) photographer, who were present with § 87(2)(b) during this incident. Neither responded to the phone calls placed to their cellphones.

On April 14, 2003, § 87(2)(b) (whom § 87(2)(b) identified as a witness in an email sent on April 8, 2003) was contacted on his cellular phone. He stated that he was at the intersection of the incident with § 87(2)(b) but that he did not observe the incident, as he was looking in the opposite direction. He could not provide descriptions of the officers involved.

The Internet was checked for information regarding § 87(2)(b) and a cell phone number and email address were found at § 87(2)(b). The cell phone number was called, but a message stated that the cell number had been temporarily disconnected. § 87(2)(b) was also emailed numerous times, but never responded.

Subject Officer Statement—Police Officer Anthony Marks

On May 24, 2003, Officer Marks provided a statement pursuant to Internal Affairs Log #03-04497 (Enclosure 17). Lieutenant Arianna Donovan and Detective Shawnee Moore of Group 1 conducted the interview. The IAB interview consisted of PO Marks being shown § 87(2)(b)'s photographs and commenting upon them. It was unclear exactly which photographs were shown to the officer.

On June 23rd, 2003, PO Marks was interviewed by the CCRB (Enclosure 17a-17e). PO Marks was also shown the series of § 87(2)(b)'s photographs and they were identified by number in the interview. The two statements are summarized with differences between them noted.

On February 15, 2003, Officer Marks was assigned to Mobile Response Zone 13, as part of the anti-war detail. At approximately 12:00 PM, PO Marks was posted at 3rd Avenue between 53rd and 54th Streets for crowd control, where he remained for the rest of his tour. Immediately prior to this incident, PO Marks assisted several other unidentified uniformed officers in the arrest of an unidentified individual who

allegedly pulled a Mounted Officer from his horse. There were two or three other arrests occurring at this time. According to the officer in his CCRB statement, § 87(2)(b)'s photograph 8 depicts this.

Shortly after this arrest ("about a minute"), an unidentified chief instructed PO Marks to remove a group of photographers standing in the avenue, specifically the middle lane and blocking traffic. PO Marks told three photographers — § 87(2)(b) and two males — to move back and the two males did so, though § 87(2)(b) hesitated and stopped. In the IAB statement, PO Marks claimed that an unidentified sergeant assisted him in directing the photographers back and guiding them back, though he was unsure of the rank in his CCRB statement. PO Marks put his hand on one of the photographers to start ushering him back, though as the officer did this, the other two photographers stopped moving and resume taking pictures in the street. PO Marks and the sergeant then placed their hands on the stopped photographer to guide that photographer back, only to have the other photographers stop. In photograph 10 of § 87(2)(b)'s series, PO Marks identified the sergeant wearing a hat with gold brim as the sergeant assisting him (subsequently identified as Sgt. Joseph Alagna).

In his IAB statement, PO Marks admitted that at one point he placed his hand on § 87(2)(b) and told her to move back, only to have her stumble to the ground. As she fell back, PO Marks tried to grab onto her camera in an effort to keep her up, but he missed her camera and she fell down. In his CCRB statement, though, PO Marks claimed that he was not interacting with § 87(2)(b) when she fell. Instead, PO Marks claimed to be assisting another unidentified officer with a different photographer; in photograph 10 of § 87(2)(b)'s series, PO Marks identified the officer wearing a light blue NYPD jacket (subsequently identified as Captain Klein) as the officer he was assisting. Continuing with his CCRB statement, PO Marks claimed to observe § 87(2)(b) fall "out of the corner of [his] eye" while he assisted Captain Klein, at which time he turned to try and grab her camera so as to prevent her fall but without success. During the CCRB statement, PO Marks also denied ever touching § 87(2)(b) until after she had fallen, at which time he extended his arm to help her stand up, as is depicted in Enclosure 181. PO Marks denied pushing § 87(2)(b) to the ground. In the IAB statement, PO Marks was shown a photograph in which he appears to be stepping on § 87(2)(b) foot and he stated that it was possible he unintentionally stepped on the foot.

After § 87(2)(b) fell, Officer Marks attempted to extend his arm out to help her, as seen in Enclosure 181. PO Marks helped § 87(2)(b) to her feet, though she cursed at him, calling him a "fucking jerk" and "fucking idiot." At no point did § 87(2)(b) ever claim that he broke her camera. PO Marks helped § 87(2)(b) to the sidewalk, at which time he alleged that § 87(2)(b) swung her arm at him in an effort to hit him. In photograph 16, PO Marks stated that § 87(2)(b) was "cocking her hand back" to hit him. Officer Marks backed away from § 87(2)(b) avoiding her punch, and left the scene. PO Marks was never told that § 87(2)(b) was a member of the press until the time of his IAB interview. He did not see her press pass on the date of the incident.

Witness Officer Statement—Captain James Klein

Captain Klein was interviewed at the CCRB on May 27th, 2003 (Enclosure 15-15b). During the interview, Captain Klein was shown the series of § 87(2)(b)'s photographs and they are identified by number.

On February 15, 2003, Captain Klein was supervising the Deputy Commissioner of Public Information (DCPI) detail. At the approximate time of the incident, Captain Klein was standing on the western sidewalk of 3rd Avenue where he observed uniformed officers were arresting demonstrators for obstructing the traffic flow in the street. There were several photographers standing in the street and Captain Klein ordered them to stay out of the street. Captain Klein assisted in trying to remove the photographers from the street and escort them to the sidewalk. Upon viewing photograph #10, Captain Klein confirmed that he is the officer in the photograph wearing a light blue NYPD jacket. Captain Klein stated that he had no interaction with the sergeant (Sgt. Alagna) shown in the photograph. At one point, he observed § 87(2)(b) on the ground, though he did not see what led to her being in that position. She had press credentials around her neck as well as a couple of cameras. Captain Klein helped § 87(2)(b) to her feet — after she repeatedly cursed at him and the other officers — and then walked her over to the curb where several other photographers were standing. He had no further interaction with her.

Subject Officer Statement—Sgt. Joseph Alagna

Sgt. Alagna was interviewed at the CCRB on June 11th, 2003 (Enclosure 16-16b). During the interview, Sgt. Alagna was shown the series of § 87(2)(b)'s photographs, which are identified by

number. He was also shown the last photograph that § 87(2)(b) took with her camera prior to it being damaged.

On February 15, 2003, Sgt. Alagna of the Office of the Chief of Department was assigned to assess problematic locations at the protest and report to the Chief of Department about what was going on. At one point, while at the command post located at East 49th Street and 1st Avenue, Sgt. Alagna heard a call for assistance over the radio from an officer at the intersection of East 53rd Street and 3rd Avenue, to which he responded.

Almost immediately after his arrival at the location, Sgt. Alagna observed the incident with § 87(2)(b) unfold. There were five to ten photographers in the middle of the street, but he did not observe any police officers talking to them or issuing them any commands to get off of the street. Sgt. Alagna indicated that he did not direct any of the photographers off the street. According to the sergeant, he observed § 87(2)(b) falling backwards, though it did not appear to him as if she had been struck by anyone or anything. Sgt. Alagna reached out to grab her and try to hold her up, but § 87(2)(b) fell to the ground. In photograph 10 of § 87(2)(b)'s series, Sgt. Alagna confirmed that he is in the photograph as the officer wearing a hat with a gold fitted brim and described his hand as being “cupped,” but stated that it was not cupped around the lens of § 87(2)(b) camera. Sgt. Alagna claimed that the lens of § 87(2)(b) camera appeared to him in the photo to be immediately above his hand. In viewing the last photograph taken by § 87(2)(b) which depicts a hand directly in front of the lens, Sgt. Alagna reiterated his statement that he never put his hand over the lens of § 87(2)(b) camera. He did state, however, that he might have touched § 87(2)(b) camera, but that it would have been unintentional. As § 87(2)(b) fell, Sgt. Alagna “grabbed her jacket,” but was never able to get a full grip to prevent her fall. In photograph 12 of the series, Sgt. Alagna stated that he was trying to pick up § 87(2)(b) and that she was saying, “Fuck you; get the fuck away from me.” Sgt. Alagna left the scene with no further contact with § 87(2)(b). Sgt. Alagna denied interacting with § 87(2)(b) prior to this incident, touching § 87(2)(b) prior to her fall, touching the lens of her camera, or observing any other officers grabbing the lens of her camera.

TARU Videotape

There was no Technical Assistance and Response Unit (TARU) video footage regarding this incident. In a video recorded by Detective Francine Smith of the NYPD's TARU (See Enclosure 21), Lt. Alagna is seen in the vicinity of the intersection of East 53rd Street and 3rd Avenue at 2:37:21 PM, approximately thirty minutes prior to this incident and contrary to his claim that he had just gotten to the intersection prior to § 87(2)(b) incident.

IAB Special Investigations Unit Investigation 01-041-03 conducted by Det. Shawnee Moore

Det. Moore's investigation (Enclosure 8-8gg) provided no additional information. Det. Moore unsubstantiated § 87(2)(b) allegation that PO Marks pushed her to the ground, citing the lack of an independent witness to verify or refute § 87(2)(b) claim as the reason for the recommendation. Group Commander Deputy Inspector Thomas Mason endorsed the report.

Documents Regarding Camera and Lens Repair

The document from Nikon's Photographic Service Department (enclosure 19) for service order #§ 87(2)(b) is an acknowledgement that they received camera parts sent to them by Photo Habitat for repair, pursuant to order number § 87(2)(b). It indicates they received two separate products, one D-1 Digital SLR ONL (serial #§ 87(2)(b)) and one 80-200 AF-S (serial #§ 87(2)(b)).

The document from Photo Habitat (enclosure 19-19a), pursuant to invoice #§ 87(2)(b) indicates that they received two camera parts from customer § 87(2)(b) § 87(2)(b) on February 19, 2003. The two specific parts, with their respective serial numbers are, “§ 87(2)(b)” and “AFS § 87(2)(b).” It also states “please check all functions—D1 and § 87(2)(b).” The receipt then lists a price of \$695 for “Body,” and \$462 for “Lens.”

§ 87(2)(b) Press Card

The front of § 87(2)(b) press card indicates that § 87(2)(b) is a member of the working Press, and that she “is entitled to pass police and fire lines wherever formed” (Enclosure 10d-10e). The pass, issued by the Police Department, expires on December 31, 2003. The back of the press card indicates certain conditions that must be accepted by the issuee. The relevant conditions indicate that the card “may

be taken away by competent authority at any time;” that “the bearer assumes all risk in case of accident;” and that “it must be worn fully exposed at all times when bearer is at or within police or fire lines.”

Conclusions and Recommendations

It is undisputed that § 87(2)(b) and several other press photographers were standing on 3rd Avenue between East 52nd and 53rd Streets taking photographs of individuals being arrested by police officers. At approximately 3:08 PM on February 15, 2003, officers made contact with her and she fell to the ground. Police Officer Anthony Marks, Sergeant Joseph Alagna, and Captain James Klein were all present in the immediate vicinity as she fell. A camera and camera lens belonging to § 87(2)(b) were damaged at some point before February 19, 2003 and sent to Photo Habitat by the § 87(2)(b) for repair.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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Allegation D. Sergeant Joseph Alagna damaged § 87(2)(b) property, in violation of Patrol Guide Procedure 203-10.

There is no question that § 87(2)(b) camera and camera lens were damaged, as receipts from Photo Habitat confirm that the items were repaired on February 19th, 2003. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Although the majority deal with search warrant incidents, several CCRB cases (200104875, *exonerated*, Panel 8D-2002; 200203388, *exonerated*, Panel 10B-2003; 200205089, *exonerated*, Panel 1A-2003; and 200208392, *unfounded*, Panel 4D-2003) have set a precedent whereby damaged property has been found to be regrettable by-products of an overlying action, but not necessarily misconduct. § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: